

## **Jefferson Solutions**

### **Report on Recommendations to Improve Service Contracting**

#### **Introduction**

Federal government discretionary spending has shown a significant increase in the procurement of services in support of mission needs. In FY 2003, 52% of the 305 billion procurement dollars spent government-wide were awarded through service contracts. This percentage contrasts sharply with the mid 1980's where 56 percent of funds were spent on acquiring supplies and equipment. The Department of Defense (DOD) awarded over 70 percent of Federal procurement dollars in 2003, including \$101 billion for services other than construction and public utilities. The Tables at Appendix 1 (with information provided by DOD's Directorate for Information Operations and Reports) offer more details on this trend of the increasing number and value of service contracts.

Much of the legislation and policies in the 1990s was designed to make the Federal procurement system more responsive to agency mission requirements while maintaining the principles of competition, accountability and transparency. These reforms resulted in contracting officials having more discretion in sourcing decisions and a strong emphasis on business outcomes or results when acquiring services. As in the private sector, "best value" rather than "low price" became the norm for evaluating contractor proposals. While legislative changes emphasized using commercial streamlined contracting practices, their focus however remained on buying commercial goods rather than commercial services.

More recent changes, such as the Service Acquisition Reform Act (SARA) were made by Congress to address more specifically the challenges and opportunities of acquiring services through contracts. However, concerns remain that program and contracting officials are not yet obtaining services in the most efficient and cost effective manner. Recent Government Accountability Office (GAO) reports suggest that much more could be done through the use of spend analyses and other best practices to develop a more strategic and cost-effective approach for acquiring services. These concerns affect the public's confidence in the fairness, efficiency and effectiveness of the Government's acquisition practices at the same time it has increased its reliance on the private sector and championed an aggressive competitive sourcing program.

To address these concerns, Jefferson Solutions (Solutions) was asked to examine the DOD service-contracting environment and perform the following tasks:

- o Under Task 1 of our contract, Solutions was asked to "summarize major provisions of Federal laws, regulations, proposed and final rules and policies that relate to service contracting." On August 2, 2004, we submitted a matrix that included a summary of laws, policies, and regulations that pertained to all types of services, and specific services such as architect/engineering, information technology, research and development, and advisory and assistance services

- Under Task 2, Solutions was asked to thoroughly assess existing laws, regulations, and policies and propose improvements to:
  - Protect the best interests of the Government
  - Ensure the effective, efficient and fair award of contracts for services
  - Ensure that policies and regulations provide appropriate guidance concerning the post award administration of contracts for services
  - Incorporate commercial best practices wherever possible
  - Eliminate inconsistencies in, and among existing laws, regulations, and policies.

Also, Solutions was to provide recommendations regarding the need for different acquisition processes and regulations for the different types of services (i.e., personal services, advisory and assistance services, dismantling, demolition or removal of improvements, health care services, etc.)

The Solutions team interviewed key individuals from Defense, GAO, private industry, academe and Congress to obtain their views on how well the DOD process for acquiring services was working as well as on changes that would improve this process. While the focus of this task was on identifying useful and/or necessary legal, regulatory or policy changes, interviewees frequently mentioned management improvements as a preferred approach to deal with the issues they raised. For example, virtually everyone supported the move toward performance-based methods for acquiring services but argued that both program and contracting staff needed a better understanding of how to effect that shift. To take all of these views into account, our assessment characterizes suggested improvements as requiring either “legislative, regulatory or policy” changes or “management” changes. Solutions also notes for the management changes whether contracting or program staff actions are central to the reform.

The following section addresses some of the general concerns raised regarding service contracting as well as some specific recommendations for improvement.

### **Concerns Related to Service Contracting**

The Federal Acquisition Regulations (FAR) defines a service contract in Part 37 as a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. A service contract may be either a non-personal or personal contract. It can also cover activities performed by either professional or non-professional personnel whether on an individual or organizational basis.

As in all Government contracts, cost effectiveness is of concern because public money is financing the contract and funds are limited. However, determining the value of results is

often more difficult to measure for services contracts than for contracts that provide tangible goods. Many of those we interviewed raised concerns about the capacity of the Department to effectively administer service contracts once awarded. The concern becomes greater as both fees and contract extensions are more closely tied to documented contractor performance. Some observers argued that the Government's failure to adequately review performance resulted in contractors receiving excessive and undeserved incentive fees or contract extensions.

In addition, some service contracts have the potential of influencing the authority, accountability, and responsibilities of Government officials. These are particularly those contracts that require the supplier to provide advice, opinions, ideas, reports, recommendations, analyses, or other work products. These contracts have traditionally required greater management attention to ensure that Government officials properly exercise their authority to avoid any potential or actual conflict of interest with the contractor (so called Organizational Conflicts of Interest). However as more attention has focused on defining and obtaining business results from contract support, some questioned the need for these advisory service types of contracts to be treated differently from other services contracts.

The following highlights other areas of concern noted by many of those interviewed.

- **Interagency Contracts**

Federal agencies have been increasingly using contracts and acquisition services offered by other agencies, as demonstrated in the growth of GSA's Federal Supply Schedule and government-wide acquisition contracts (GWAC).<sup>1</sup> Agencies charge users of these contracts a fee to cover administrative expenses. GSA's schedule program, as described in FAR section 8.4, allows a fast method to satisfy customer requirements and lower administrative costs. GSA does not require contractors to compete against one another to receive schedule contracts. Rather, GSA negotiates contracts, including pricing and other terms, with all contractors who meet the qualification standards for the schedule. The items covered by the contract are described in general terms in the Schedule. The exact scope of the GSA contracts is not transparent to the ordering agencies, since GSA does not make this and other aspects of the contract public. As a result, several observers noted that it is difficult for management officials to know if the order is "within scope" or not.

GWACs are intended to facilitate purchases of information technology-related products and services, such as network maintenance and technical support, systems engineering, and integration services. The sponsoring agency awards the contract, and other agencies order from it. Some observers raised concerns about whether "out-of-agency" contracting officials paid appropriate attention to fundamental contracting principles, as for example the reliance on competition and the need to ensure tasks were within the scope of the contract.

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<sup>1</sup> GAO-03-443 "Federal Spending and Workforce Trends" Washington, DC April 2003. p.11

- **Personal Services Contracts**

As defined in FAR 2.101, "Personal services contract" means a contract that, by its express terms or as administered makes the contractor personnel appear to be, in effect, Government employees. A service contract may be either a non-personal or personal contract. It can also cover services performed by either professional or non-professional personnel whether on an individual or organizational basis.

To avoid turning a carefully written non-personal service contract into a prohibited personal services contract, a special focus is needed on the kind of working relationship that exists between Federal employees and contractor employees. Inappropriate relationships may lead to situations where contractor employees perform services for Federal employees, which is contrary to civil service laws. These laws ordinarily require Federal agencies to obtain their employees by direct hire under competitive appointment. Additionally, specific Congressional authorizations must be obtained to acquire personal services through the contracting process.

In reviewing performance under support service contracts, the following criteria should be considered to determine whether a contract is personal in nature:

- Performance is on-site.
- Principal tools and equipment are furnished by the Government.
- Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of an assigned function or mission.
- Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.
- The need for the type of service provided can reasonably be expected to last beyond one year.
- The inherent nature of the service, or the manner in which it is provided, reasonably requires, directly or indirectly, Government direction or supervision of contractor employees in order to:
  - adequately protect the Government's interest;
  - retain control of the function involved; or,
  - retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

Each contract arrangement must be judged on its own facts and circumstances, but the key question always will be:

**“Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract?”**

If the answer is “Yes,” either due to the contract terms or the manner in which the contract is administered during performance, the services are personal in nature, and an improper employer-employee relationship exists. However, giving an order for a specific article or service, with the right to reject the finished product or result, is not the kind of supervision or control that would convert a contractor employee into a Government employee. It is equally inappropriate for contractor employees to supervise, control, or direct Federal employees. The responsibility for supervising Federal employees is inherently Governmental and may not be contracted out.

A number of observers noted that “support-on-demand” type contracts came much closer to personal services contracts even though traditional contracting procedures are used to bring the contractor on board.

- **Conflict of interest**

Federal employees need to be aware of the vulnerabilities unique to the acquisition of support services, especially regarding matters involving the type of work performed by contractors and the working relationship that exists between Federal employees and contractor employees.

No service contract should be granted to any individual or organization which is incapable, or possibly incapable, of presenting impartial assistance or consulting to the Government, or that has an unfair advantage over other competitors, unless every effort is made to mitigate the conflict or advantage, and the mitigation efforts are documented in the contract file. There may be conflicts of interest if the response to any of the following questions is “yes”.

- Can the Contractor perform services under contract in such a way that it will influence the granting of future contracts to itself?
- Was any Contractor employee involved in the system’s design or production upon the systems’ implementation, installment, etc.?
- Has the Contractor previously been engaged in jobs related to the same program or activity as that which is the subject of the present contract?
- Does the contract allow the Contractor to accept products or activities on behalf of the Government?
- Will the job to be executed by the Contractor put it in a position of influence within the Government in such a way that this will affect its future business?

- Will the job to be executed by the Contractor affect its interests with other clients of its own?

These questions need to be addressed early on in the acquisition planning phase of the acquisition process.

- **Inherently Governmental Functions**

Agencies use service contracts to acquire special knowledge and skills not available in the Government, obtain cost-effective services, or obtain temporary or intermittent services, among other reasons. Not all functions may be performed by contractors, however. Just as it is clear that certain functions, such as the command of combat troops, may not be contracted, it is also clear that other functions, such as housekeeping and food services, may be contracted. The difficulty is in determining which of these services that fall between these extremes may be acquired by contract.

A basic tenet of support service contracting states that contracts are not to be used for the performance of inherently governmental functions. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or developing value judgments in decision-making for the Government.

As a matter of policy, an "inherently governmental function" is a function that is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities that require either the exercise of discretion in applying Government authority or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: (1) the act of governing, i.e., the discretionary exercise of Government authority, and (2) monetary transactions and entitlements.

Agencies have occasionally relied on contractors to perform certain functions in such a way as to raise questions about whether Government policy is being created by private persons. Also, from time to time questions have arisen regarding the extent to which de facto control over contract performance has been transferred to contractors. The OFPP Policy Letter 92-1 which has now been superseded by the May 2003 version of OMB Circular Number A-76 (Competitive Sourcing) provided an illustrative list of functions, that are, as a matter of policy, inherently governmental.

- **Training**

Over the last decade, the federal acquisition workforce has had to adapt to changes in staffing levels, workloads, and the need for new skill sets. Procurement reforms have placed unprecedented demands on this workforce. For example, contracting specialists are required to have a greater knowledge of market conditions, industry trends, and the technical details of the commodities and services they procure. Changes in the acquisition workforce have been accompanied by changes in the types of actions being managed. Acquisition personnel need to analyze business problems and help develop

strategies in the early stages of the acquisition process. Special training is needed to ensure that special skills related to service contracts are inculcated in the workforce. However, there is very limited training available to deal with these service contracting issues.

### **Changes in the Service Contracting Environment**

To address the inefficiencies of procurement in the first part of the 1990s, Congress passed the Federal Acquisition Streamlining Act (FASA) of 1994. This change was designed to give the Federal government improved access to competitive commercial markets and innovative commercial technologies. To provide a better balance between the value of a contract action and the resources required to compete the procurement, FASA eased controls on smaller-sized purchases. Those purchases of less than \$2,500 were exempted from many previously applicable procurement statutes. Also, efficient purchases were encouraged through purchase cards and other streamlined procedures while reserving purchases between \$2,500 and \$100,000 for small businesses. To reduce individual contract transaction costs, FASA emphasized making multiple awards of task and delivery order contracts to allow subsequent awards for goods and services using task orders for specific requirements. This, in effect, allowed the government to invest limited acquisition resources for extensive analysis of many competitive offers one time and then continue the competition for specific task orders among just the contractors selected for the multiple award contracts.

As the scope and frequency of service contracts increased, existing methods for buying hardware and goods were adapted.

The Federal Acquisition Reform Act of 1996 (known as the Clinger-Cohen Act of 1996) moderated the full-and-open competition mandate by stating at Section 4101 of the Act that “The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Government’s requirements.” Clinger-Cohen also provided guidance to ensure a fair and open competitive process for contractor support, giving contracting officers more discretion when making competitive range determinations. It also permitted the use of Simplified Acquisition Procedures in the acquisition of commercial items up to \$5M.

Despite, or perhaps because of, the reforms of the mid 1990s, Congress saw the need for revising procurement law to specifically address service contracts. There were calls from federal contractors to change how the government buys services. The resulting Services Acquisition Reform Act, introduced as a bill in Congress by Representative Tom Davis in March 2002 became law in November 2003. It extended commercial reforms put in place by the 1996 Clinger-Cohen Act to the field of service contracting.

A section of SARA allows agencies to award time-and-material and labor-hour service contracts under Simplified Acquisition Procedures in Part 12 of the FAR. Another section broadened the category of commercial services that can be sold to the government under FAR part 12 to include research and development services. SARA also contained a

preference for performance-based contracting to allow private sector companies to offer innovative solutions to complex problems. Defining tasks in measurable, mission-related terms and defining required outputs are critical to successful services contracting. Rewarding contractors for meeting these goals can promote efficiency in government operations and greater value to the taxpayer. The main stumbling block to full and successful implementation of performance-based contracting continues to be training.

The Department of Defense (DOD) spends billions of dollars each year acquiring services through task orders issued under multiple-award contracts or the General Services Administration's federal supply schedule program. Based on GAO and DOD Inspector General reports that DOD was not obtaining the level of competition on these task orders that Congress had envisioned, a new provision requiring such competition was enacted. Section 803 of the National Defense Authorization Act for Fiscal Year2002 requires procedures to promote competition and provides when waivers of competition are allowed.

GAO identified in a recent review the extent to which selected DOD buying organizations waived the competition requirements of section 803. Competition requirements were waived for nearly half of the multiple-award contract and federal supply schedule orders GAO reviewed. Often, contracting officers waived competition based on requests from the program offices to retain the services of contractors currently performing the work. In addressing these requests, safeguards to ensure that waivers were granted only under appropriate circumstances were lacking. Specifically, guidance for granting waivers did not sufficiently describe the circumstances under which a waiver of competition could be used. In addition, the requirements for documenting the basis for waivers were not specific, and there was no requirement that waivers be approved above the level of the contracting officer.

GAO is making recommendations to the Secretary of Defense to develop guidance on the conditions under which a waiver of competition may be used, require detailed documentation to support waivers, and establish approval authority above the contracting officer level based on the value of the order. DOD concurred with these recommendations.

#### **Service Contracting Issues and Concerns Reported In Interviews**

Interviews were conducted with the individuals listed in Appendix 2. Issues and concerns expressed by them are listed and categorized in the following table.

Issue/Concern	Primarily a Legislative, Regulatory, and/or Policy Consideration	Primarily a Management Consideration		Comments		
		Program Office	Contracting			
<b>DOD Objectives:</b>						
<b>Protect the Best Interest of the Government</b> <b>Ensure the effective, efficient, and fair award of contracts for services</b> <b>Ensure that policies and regulations provide appropriate guidance concerning the post award administration of service contracts</b> <b>Incorporate commercial best practices wherever possible</b> <b>Eliminate inconsistencies in, and among existing laws, regulations and policies</b>						
<b>Planning</b>						
Acquisition planning at the strategic level is non-existent and abandoned often below that level to speed up the acquisition process.		X		See management recommendation below.		
The government does not use a strategic approach when buying services. In the private sector, they conduct a spend analysis, try to leverage their buying power, and work with a manageable number of suppliers.		X	X			
There is tendency to develop government requirements with mandatory provisions that increase costs rather than using more flexibility in designing requirements for services.		X				
<b>Restrictive Practices</b>						
Agencies are using performance based service contracting on an exceptional basis rather than as a preferred method of contracting.		X	X	See management recommendation below.		
The government should not bundle requirements to a degree that limits competition and impacts the industrial base for services.		X	X	See Management Recommendation below		
Inappropriate use or overuse of contract types that increase government costs and risks (e.g. time and materials).		X	X			
Lack of effective controls and accountability with respect to fee for services/franchise fund contracting.	X			See regulatory recommendation below.		
As a result of Defense Finance and Accounting Service (DFAS) requirements, there are too many fund cites used in the contract that makes it difficult to manage.	X					

Issue/Concern	Primarily a Legislative, Regulatory, and/or Policy Consideration	Primarily a Management Consideration		Comments
		Program Office	Contracting	
There is a reluctance to allow long-term contracts with a base period longer than one year. It would be easier for the government to establish incentive structures and the contractor to manage risk, if the base periods were longer.	X			
Award Term Contracting is a useful contracting technique for large O&M services contracts but there are roadblocks in its use due to lack of regulatory coverage and legal concerns regarding appropriation.	X			See regulatory recommendation below.
When annual funding is received late in the fiscal year, it is difficult to plan and execute contracts properly.	X	X		
<b>Interagency Contracts/Schedules/BPAs</b>				
Due to the long term nature of GWACs, MACs, and GSA Schedules, small businesses that are not successful through teaming, mergers, and acquisitions are left out, thus impacting the industrial base for services. In pockets of services such as information technology security, there may be concerns about an eroding industrial base.	X			
There is a perception that the government is not receiving adequate competition when obtaining services through streamlined contracting vehicles such as Government-wide acquisition contracts (GWACs), multiple award contracts (MACs), and Federal Schedule contracts.	X			
Programmatic pressure to get contracts executed quickly can result in scope of work issues. When agencies place orders against schedules and IDIQ contracts, the contractor's may not have access to all the changes in the underlying contracts and may accept work that is outside the scope of the contract.		X		

Issue/Concern	Primarily a Legislative, Regulatory, and/or Policy Consideration	Primarily a Management Consideration		Comments
		Program Office	Contracting	
The scope of work under multiple award contracts, IDIQs, and GWACs, is so broad that it does not result in meaningful competition. These types of vehicles only provide a hunting license to compete for future task orders. The scope of work under the basic MAC, IDIQ, and GWAC should be more specific. Also, there is concern that these types of contracts are not competed more often.	X			
The current Federal Supply Schedule system leads to too many abuses and needs an overhaul.	X			
Agencies continue to use schedules to satisfy requirements without adequate FAR guidance on the ordering procedures.	X			
Since the FAR does not require synopsis of requirements obtained via orders under schedule contracts and task order contracts and the statement of work for the basic contract is so broad, there is no visibility of the specific requirements being purchased.	X			
<b>Workforce</b>				
The workforce needs more training to understand the changing marketplace.		X	X	See management recommendation below.
Program Offices lack training in procurement and performance-based service contracting.		X		See management recommendation below.
Program Office staff do not have the grade levels and seasoned "core capability" to manage service contracts properly and often do not recognize the need for a cadre of people with expertise in their program requirements as well as the acquisition process.		X		See management recommendation below.
Downsizing and training of the acquisition workforce.		X	X	See management recommendation below with respect to training.
The government needs to determine the appropriate incentives to motivate the acquisition workforce to obtain results oriented performance for dollars spent in service contracting.		X		

Issue/Concern	Primarily a Legislative, Regulatory, and/or Policy Consideration	Primarily a Management Consideration		Comments
		Program Office	Contracting	
<b>Contractor Burdens</b>				
The Government does not understand the private sector culture with respect to profits. This leads to unreasonable price reduction provisions and fee percentages.	X			
There is a concern about award fees/incentives under award term contracts. Contractors believe they should get the entire award term rather than getting additional terms based on performance.	X			See regulatory recommendation below.
The size standards and affiliation rules do not adequately address changes in the marketplace for service contracting.	X			
The government is shifting the risk to private industry without adequately rewarding the contractors.	X			
Contractors spend a lot of bid and proposal costs to compete for GWACs/MACs so that they can compete again for task orders.	X			
<b>Legislation and Regulations</b>				
The Service Contract Act is outdated and improvements are needed in policies relating to the increase in labor rates.	X			
The regulation for advisory and assistance services is obsolete.	X			See regulatory recommendation below.
The current legislative 5-year limitation on task/delivery order contracts inhibits effective and efficient acquisition approaches	X			See legislative recommendation below.
The statutory limitation of 5 years for IDIQ contracts for advisory and assistance services is not enough time for the government to realize its return on investment	X			See legislative recommendation below.
<b>Contract Management</b>				
Lack of "best practices" in contract administration.	X			
Post award performance metrics and systems are not adequate to measure performance.		X	X	

Issue/Concern	Primarily a Legislative, Regulatory, and/or Policy Consideration	Primarily a Management Consideration		Comments
		Program Office	Contracting	
Contract oversight is a weak area in service contracting, in particular oversight of personal service contracts and post-award administration to ensure the contractor is performing in accordance with the contract requirements.		X	X	See management recommendations below.
There should be more teeth in the evaluation of a contractor's past performance. If all contractor's that bid get the maximum past performance rating, then past performance is not being used as a discriminator to select the best contractor.		X	X	
There should be a separation between contractor and government employees. The government should not manage non-personal service contracts as if they were personal service contracts.		X	X	See management recommendation below.
The rules regarding the use of personal service contracts are being bent; thus more compliance is needed.		X	X	See management recommendation below.
Air Force PEO structure should be copied by other organizations	X	X		See management recommendation below
Army's Business Advisory Groups to manage service contracts should be used in all Services	X	X		See management recommendation below

## Conclusions

The increasing volume of service contracting requires more management attention.

For the most part, the laws, policies, and regulations provide a constructive framework for the contracting workforce for the acquisition of services. While no new contract management oversight structure is required, there is a need for improvements in the area of program management where services are being acquired. Improvements are needed to clearly differentiate the requirements and challenges involved in acquiring services from those related to acquiring supplies and equipment. To the extent possible, revised governance should focus on services in general and not narrowly limited to separate categories of services.

Many of the interviewee concerns identified in the above table cannot be addressed through new controls in laws, regulations, and policies. In fact, some of the concerns

relate to the lack of flexibility resulting from the existing regulatory environment. Changes to the existing regulatory base regarding the acquisition of services should be confined to those that:

1. Consolidate existing coverage to simplify regulatory requirements and promote common ways of doing business.
2. Address ongoing problems and issues that require regulatory treatment to ensure their satisfactory resolution.
3. Eliminate coverage of management concerns that are no longer relevant or have been adequately addressed by other reforms and remedies.
4. Provide opportunities for innovation and flexibility to address changes in the services marketplace.

With these objectives in mind, Solutions proposes the following major recommendations:

### **Recommendations**

1. Revise FAR Part 37 Service Contracting so that it is the single FAR reference to plan for and execute service contracts. Develop a proposal for consolidating and improving FAR Part 37 that:
  - Provides coverage on acquisition planning (now contained in FAR Subpart 7.1) that relates only to service contracts
  - Provides coverage on “inherently governmental functions” (now contained in FAR Subpart 7.5)
  - Provides coverage on organizational and consultant conflict of interest (now contained in FAR Subpart 9.5)
  - Provides coverage on acquiring services through the Federal Supply Schedules
  - Eliminates coverage on advisory and assistance services
2. Develop DFAR regulatory coverage that implements the consolidated FAR 37 and establishes detailed policy with respect to the using Federal Supply Schedule Contracts and GWAC vehicles for the acquisition of services.
3. Modify DFAR 237.170-3 (b) *Acquisition of services through any contract or task order awarded by an agency other than DOD* to include specific information of justification requirements and approval authority.
4. Develop a proposal for including cost plus award term and fixed price award term contracts in FAR Part 16 Contract Types.
  - In the interim, modify Section 216 of the DFAR to incorporate the coverage
5. Develop a legislative proposal for elimination of the 5-year limitation for the total period of task and delivery order contracts (imposed by Section 843 of the National Defense Authorization Act for Fiscal Year 2004) as well as the 5-year limitation imposed by FASA on advisory and assistance task order contracts.

6. Issue a DOD Directive to address both the program management and contracting communities on the importance of complying with existing laws, policies, and regulations applicable to service contracting. The Directive should highlight, among other things, the need to:

- Establish Business Advisory Groups comprised of program and contracting staff to coordinate and manage service contract requirements.
- Adhere to conflict of interest policies to ensure that services are acquired without barriers to full and open competition
- Strictly observe existing policies and procedures regarding personal services contracts
- Use a spend analysis to plan requirements for services in support of DOD mission needs
- Manage service contracts to ensure that the government retains inherently governmental decision making authority
- Follow the competitive sourcing policies set forth in OMB Circular A-76
- Use commercial services to the extent possible
- Structure requirements using performance based service contracting policies with measurable performance outcomes that link to DOD's senior level strategic objectives
- Use the proper contract type with incentive structures that reduce government risk
- Have a structured acquisition review process appropriate for the size and complexity of the acquisition
- Avoid unnecessary and unjustified contract bundling
- Share best practices and lessons learned

7. Task the Defense Acquisition University (DAU) to create a comprehensive curriculum for service contracting that:

- Addresses the competencies required by contracting and program staff in planning, placing and administering service contracts
- Provides opportunities to practice using a variety of alternatives for implementing performance-based contracting techniques

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8. Task DAU to conduct a comprehensive survey of the training needs of acquisition personnel involved in the placement and administration of service contracts.
9. Establish a strategic training plan with identified funding sources for completing the necessary training.

**SUMMARY OF LAWS, POLICIES & REGULATIONS RELATED TO SERVICE CONTRACTING**

<b>SUBJECT MATTER</b>	<b>TITLE / CITATION</b>	<b>DESCRIPTION</b>
Acquisition Reform	<b>LAWS APPLYING TO ALL TYPES OF SERVICES</b>  Services Acquisition Reform Act of 2003, Title XIV, National Defense Authorization Act FY 2004 Public Law 108-136 November 14, 2003	<ul style="list-style-type: none"> <li>• Provides government-wide definition of “acquisition”</li> <li>• Establishes an acquisition workforce-training fund within GSA</li> <li>• Establishes in-house architectural and engineering capabilities to contract for performance of these services</li> <li>• Clarifies “surveying &amp; mapping” as it relates to architectural and engineering services</li> <li>• Raises the dollar threshold from \$85K to \$300K for a participation incentive for small business concerns in acquisitions for architectural and engineering services</li> <li>• Requires architectural and engineering services on GSA multiple-award schedules or under Government-wide task and delivery orders be performed under the supervision of a licensed professional engineer and awarded pursuant to the quality-based selection procedures, Chapter 11, Title 40 U.S.C.</li> <li>• Requires appointment of a non-career, Chief Acquisition Officer at each executive agency</li> <li>• Authorizes telecommuting of Federal contractors</li> <li>• Provides that a performance-based service contract/task order be treated as a contract for a commercial item (this would authorize the use of special simplified acquisition procedures in the FAR for commercial items if the performance-based contact/task order is valued at \$5M or less and apply to those contracts the current waivers of requirements and certifications applicable to contracts for commercial items)</li> </ul>

## SUMMARY OF LAWS, POLICIES & REGULATIONS RELATED TO SERVICE CONTRACTING

AUGUST 2, 2004

SUBJECT MATTER	TITLE / CITATION	DESCRIPTION
		<ul style="list-style-type: none"><li>Requires a FAR provision allowing time-and-material and labor-hour contracts to be used for commercial services commonly sold to the public</li><li>Clarifies the definition of commercial item to place commercial services on an equal level with supplies</li><li>Provides amendments related to Federal emergency procurement flexibility</li></ul>
Acquisition Reform	Federal Acquisition Reform Act (FARA) Renamed the Clinger-Cohen Act of 1996 Public Law 104-106, effective April 1, 1996	Provides guidance to ensure a fair and open competitive process for contractor support. FARA gives contracting officers more discretion when making competitive range determinations and permits the use of Simplified Acquisition Procedures in the acquisition of commercial items up to \$5M.

**SUMMARY OF LAWS, POLICIES & REGULATIONS RELATED TO SERVICE CONTRACTING**

SUBJECT MATTER	TITLE / CITATION	DESCRIPTION
Acquisition Reform	Federal Acquisition Streamlining Act (FASA) Public Law 103-355 October 13, 1994	<ul style="list-style-type: none"> <li>• Is designed to give the U.S. government maximum access to competitive commercial markets and innovative commercial technologies</li> </ul> <p>Specific provisions:</p> <ul style="list-style-type: none"> <li>• Exempts purchases of less than \$2,500 from many procurement statutes, and encourages efficient purchases through purchase cards and other streamlined procedures</li> <li>• Reserves and streamlines purchases between \$2,500 and \$100,000 for small businesses</li> <li>• Gives preference to making multiple awards of task and delivery order contracts</li> <li>• Includes a commercial services definition for stand-alone and ancillary services (ancillary services further clarified in FY 2000 National Defense Authorization Act (Public Law 106-65). A modification to stand-alone services was enacted in SARA (Public Law 108-36)</li> </ul>
Interim Rule on Approval of Service Contracts and Task Orders	Interim Rule, DFARS Case 2002-D024	<ul style="list-style-type: none"> <li>• Implements Section 801(b) of the National Defense Authorization Act for FY 2002 that requires DoD to establish and implement a management structure for the procurement of services. This Section establishes approval requirements for contracts and task orders for services. The rule prohibits the acquisition of services through use of a DoD contract or task order that is not performance based, or through any contract or task order that is awarded by an agency other than DoD, unless certain approval requirements are met. The rule requires approval in accordance with department or agency procedures.</li> </ul>

**SUMMARY OF LAWS, POLICIES & REGULATIONS RELATED TO SERVICE CONTRACTING**

<b>SUBJECT MATTER</b>	<b>TITLE / CITATION</b>	<b>DESCRIPTION</b>
Competition Requirements for Purchase of Services Pursuant to Multiple Award Contracts	Section 803 of National Defense Authorization Act, 2002 Public Law 107-107	<ul style="list-style-type: none"> <li>• States that "fair notice" must be given to as many vendors as possible when deciding to make a purchase. Market research prior to notice will determine if there are vendors who can supply the required service. "Fair notice" includes a description of the work to be performed and the basis on which the award will be made.</li> <li>• Section 803 requirement is satisfied when notice is given and the contracting officer receives at least three valid offers from contractors. A contracting officer can make the award if fewer than three offers are received if efforts were made to compete the contract adequately.</li> </ul>
Management Oversight of Service Contracting	OFPP Policy Letter 93-1, May 18, 1994 This Policy Letter rescinded OMB Circular A-120 [Reference Transmittal Memo #1FR 63593 (1993) and 59 FR 789 (1994)] <a href="http://www.acqnet.gov">www.acqnet.gov</a>	The Policy Letter establishes government-wide policy, assigns responsibilities, and provides guiding principles for managing the acquisition and use of services. The guidance includes a series of questions that help agencies review requirements for services to determine inherently governmental functions, procure services in a cost effective manner, manage and oversee the contract administration function, check for conflicts of interest, and maximize competition.

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<b>SUBJECT MATTER</b>	<b>TITLE / CITATION</b>	<b>DESCRIPTION</b>
Performance of Commercial Activities	OMB Circular A-76, May 29, 2003 <a href="http://www.acqnet.gov">www.acqnet.gov</a>	This Circular establishes policies for the competition of commercial activities. Agencies shall, among other things: identify all activities as commercial or inherently governmental; perform inherently governmental functions with government personnel; use streamlined or standard competitions to determine if the government personnel should perform a commercial activity; and apply FAR in conjunction with the Circular.
		This revised Circular supersedes all previous versions and OFPP Policy Letter 92-1, Inherently Governmental Functions.
<b>Regulations Applying to All Types of Services</b>		
FAR CHANGE - Federal Supply Schedules Services and Blanket Purchase Agreements	Amend FAR Subpart 8.4-Final Rule, effective July 19, 2004 FAR Case 1999-603	Incorporates policies for services into the FAR and strengthens BPA procedures under the Federal Supply Schedules.
DFARS CASE- Federal Supply Schedules Services & BPAs	DFARS Case 1999-603	Incorporates policies for service orders and expands procedures for establishing BPAs.

## SUMMARY OF LAWS, POLICIES &amp; REGULATIONS RELATED TO SERVICE CONTRACTING

SUBJECT MATTER	TITLE /CITATION	DESCRIPTION
Interim Rule on Incentives for Use of Performance-Based Contracting for Services	Interim Rule to amend FAR 2.101, 52.202-1, 4.601,12.102, 37.601, Effective June 18, 2004, FAR Case 2004-004	Implements sections 1431 and 1433 of the National Defense Authorization Act for FY 2004 (Public Law 108-136). Section 1431 provides government-wide authority to treat performance-based contracts/task orders for services as commercial items under certain conditions in addition to requiring the agency to report on performance-based contracts/task orders awarded using this authority. Section 1433 adds performance-based terminology to the definition of a commercial item.
FAR CHANGE - Procurement Lists	Amend FAR 8.714 and 52.208-9, effective July 19, 2004	Clarifies that the Javits-Wagner-O'Day program becomes a mandatory source when supplies or services have been added to the procurement list maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled.
FAR/DFARS CHANGE - Use of FAR Part 12 for Performance-Based Contracting for Services	Amend DFARS, FAR Part 12, Final Rule, effective June 25, 2004 Case 2003-D111	Removes text from DFARS 212.102 and 237.601, which implemented Section 821 of the National Authorization Act, FY 2001 (Public Law 106-398). Section 821 permitted DoD to treat certain performance-based service contracts and task orders as contracts for the procurement of commercial items. This authority expired Oct. 30, 2003 and was superseded by Section 1431 of the National Defense Act, FY 2004 (Public Law 108-136). Section 1431 provides broader, government-wide authority for the treatment of performance-based service contracts and tasks orders as contracts for procuring commercial items. See interim FAR rule above.

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<b>SUBJECT MATTER</b>	<b>TITLE/CITATION</b>	<b>DESCRIPTION</b>
Interim Rule on Contract Period for Task and Delivery Order Contracts	Interim Rule, DFARS Case 2003-D097	Establishes a 5-year limitation on the contract period for a task or delivery order contract awarded by DoD under the authority of 10 U.S.C. 2304a; and clarifies that the total contract period includes all options and modifications. This interim rule also implements Section 843 of the National Defense Authorization Act for FY 2004 (Public Law 108-136).
Contract Bundling	FAR Proposed Rule, FAR Case 2002-029, Amends 48 CFR Parts, 2, 7, 8, 16, 19, and 42. SBA Proposed Rule (RIN 3245-AF07) amends 13 CFR Par 125. Both rules published on January 31, 2003.  FAR and SBA Final rules were published October 20, 2003	The proposed rules, among other things, (1) revises the definition of contract bundling to include multiple award contract vehicles and task and delivery orders, (2) require contract bundling reviews for contracts and orders under multiple award contracts above \$7 million for DOD, \$5 million for GSA, NASA, and DOE, and \$2 million for all other agencies, for unnecessary and unjustified contract bundling, (3) require procuring activities to coordinate with their small business specialist proposed acquisition strategies above those thresholds and to coordinate with the OSDBU Office when those strategies include bundling that is unnecessary and unjustified or not identified, (4) reduce the threshold for substantial bundling from \$10 million annually to the above thresholds and revises the documentation to the OSDBU Office, (5) require agencies to identify alternative strategies that involve less bundling when an agency contemplates a bundled contract, (6) require agencies to strengthen compliance with subcontracting plans, and (7) require the OSDBU Office to perform certain oversight functions and submit a report to the Agency Head and SBA.

The final rules were adopted with only minor changes.

## SUMMARY OF LAWS, POLICIES &amp; REGULATIONS RELATED TO SERVICE CONTRACTING

Subject Matter	Title /Citation Statute	Description
Service Contract Act	Service Contract Act, October 22, 1965 (H.R. 10238), Public Law 89- 286 (41 U.S. Code 351 et seq.), effective January 20, 1966, amended by Public Law 92-473, October 9, 1972; Public Law 93-55, July 6, 1973; Public Law 94-273, April 21, 1976, and last amended by Public Law 94-489, October 13, 1976.	<p>Provides labor standards for certain persons employed by Federal contractors. Provides for payment of minimum wage specified under Fair Labor Standards Act of to employees of prime and subcontractors performing under any contract with the Federal Government "the principal purpose of which is to furnish services through the use of service employees."</p>
Service Contract Act	FAR Subpart 22.10- Service Contract Act of 1965, as Amended.	<p>Prescribes policies and procedures implementing the provisions of the Service Contract Act of 1965, as amended (41 U.S.C. 351, <i>et seq.</i>), the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, <i>et seq.</i>), and related Secretary of Labor regulations and instructions (29 CFR parts 4, 6, 8, and 1925).</p>
Service Contract Act	Final Rule, January 18, 2001	<p>The Department of Labor amended its regulations to exempt certain contracts for commercial services meeting specific criteria from coverage under the Service Contract Act.</p> <ul style="list-style-type: none"> <li>• Section 4.123(e)(1) exempts from SCA coverage contracts for the maintenance and repair of automated data processing (ADP) equipment and office information/word processing systems, scientific equipment and medical apparatus or equipment, and office/business machines where such services are performed by the manufacturer or supplier of the equipment.</li> <li>• 29 CFR 4.123(e)(2) exempts from SCA coverage both prime contractors and subcontractors performing specific commercial services that meet certain</li> </ul>

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Subject Matter	Title /Citation	Description
		<p>requirements. The commercial services are:</p> <ul style="list-style-type: none"><li>• Automobile /other vehicle maintenance services</li><li>• Financial services</li><li>• Contracts with hotels/motels for conferences, including lodging and/or meals</li><li>• Maintenance, calibration, repair, or installation services (where the installation is not subject to the Davis-Bacon Act)</li><li>• Transportations of persons by air, motor vehicle, rail, or marine vessel, on regularly scheduled routes or via standard commercial services (not including charter services).</li><li>• Real estate services, including real property appraisal services</li><li>• Relocation services, including services of real estate brokers and appraisers</li></ul> <p>To qualify for the exemption, a contract/subcontract must meet the following requirements:</p> <ul style="list-style-type: none"><li>• Services are commercial</li><li>• Contract/ subcontract will be awarded on a sole source basis, or the contractor/subcontractor will be selected for award on the basis of other factors in addition to price.</li><li>• Prime contract /subcontract services are furnished at prices which are, or are based on, established catalog or market prices.</li><li>• Service employees who will perform the services under the contract /subcontract spend only a small portion of their time servicing the government contract/subcontract</li><li>• Contractor utilizes the same compensation plan for all service employees</li><li>• Contracting officer determines in advance, that all or nearly all offerors will meet the above</li></ul>

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<b>Subject Matter</b>	<b>Title /Citation</b>	<b>Description</b>
		<p>requirements.</p> <ul style="list-style-type: none"> <li>• Contractor certifies in the prime contract/subcontract that these criteria exist.</li> </ul> <p>Relevant laws and FAR cites to this final rule include:</p> <ul style="list-style-type: none"> <li>• 41 U.S.C. 430 [1994 Federal Acquisition Streamlining Act, Section 8003]</li> <li>• 41 U.S.C. 421(c)(4)(A)[Office of Federal Procurement Policy Act, Section 34]</li> <li>• FAR Part 2.101, 12.202, 22.1003-4, 22.1003-5</li> <li>• 29 CFR Part 4, Labor Standards for Federal Service Contracts</li> </ul>

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Subject Matter	Title /Citation	Description
FAR 22.1003-5: Some examples of contracts covered		<p>Identifies some examples of services covered by the Service Contract Act (29 CFR 4.130 for more examples):</p> <ul style="list-style-type: none"><li>• Motor pool operation, parking, taxi cab, ambulance services</li><li>• Packing, crating, storage</li><li>• Custodial, janitorial, housekeeping, and guard services</li><li>• Food service and lodging</li><li>• Laundry, dry-cleaning, linen-supply, and clothing alteration and repair services</li><li>• Snow, trash, and garbage removal</li><li>• Aerial spraying and aerial reconnaissance for fire detection</li><li>• Some support services at installations, including grounds maintenance and landscaping</li><li>• Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services</li><li>• Electronic equipment maintenance and operation and engineering support services</li><li>• Maintenance and repair of all types of equipment</li><li>• Operation, maintenance, or logistics support of a Federal facility</li><li>• Data collection, processing and analysis services</li></ul>
FAR 22.1003-3: Statutory exemptions		Identifies contract/service exemptions to the Service Contract Act.

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Subject Matter	Title /Citation	Description
Architect/Engineering Services	Brooks Act Public Law 92-582/ 41 U.S.C. 541 et seq.	<p>Establishes the procurement process by which architects and engineers (A/Es) are selected for design contracts with federal design and construction agencies.</p> <p>Establishes a qualifications-based selection process, in which contracts for A/Es are negotiated on the basis of demonstrated competence and qualification for the type of professional services required at a fair and reasonable price.</p>

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<b>Subject Matter</b>	<b>Title /Citation</b>	<b>Description</b>
	<b>Regulations</b>	
Architect/Engineering Services	FAR 2.101, Definitions 40 U.S.C. 541	<p>Defines architect-engineer services as professional services of an architectural or engineering nature—</p> <ul style="list-style-type: none"> <li>• Performed or approved by a person licensed, registered, or certified to provide those services</li> <li>• Performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property</li> </ul> <p>Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operation and maintenance manuals, and other related services.</p>
	FAR 27.304-3: Contracts for construction work of architect-engineer services	<p>Provides guidance on what conditions require a patent rights clause. For example, performance of experimental, developmental or research work or test and evaluation studies, and that calls for the design of a government facility or of novel structures, machines, products, materials, processes, or equipment.</p>
	FAR Subpart 36.6: Architect-Engineer Services	<p>Prescribes policies and procedures applicable to the acquisition of architect-engineer services.</p>

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<b>Subject Matter</b>	<b>Title /Citation</b>	<b>Description</b>
	DFARS Subpart 236.6: Architect-Engineer Services	<p>Provides policy and guidance on the selection of firms for architect-engineer contracts, restrictions on award of overseas architect-engineer contracts to foreign firms, performance evaluations and other matters. Also, 10 U.S.C. 2807(b) requires notice to Congress 21 days before the initial obligation of funds if a contract is for—</p> <ul style="list-style-type: none"> <li>(i) A-E services or construction design for military construction, military family housing, or restoration or replacement of damaged or destroyed facilities; and</li> <li>(ii) An estimated total contract price of \$500,000 or more.</li> </ul>
	DFARS Subpart 219.10: Small Business Competitive Demonstration Program	<p>States that architect-engineering services in support of military construction projects/military housing projects are exempt from the Small Business Competitive Demonstration Program, except for the emerging small business set-aside requirements.</p>
	Interim Rule, Acquisition of Architectural and Engineering Services DFARS Case 2004-001	<p>Implements 1427(b) restricting acquisition of A/E services through multiple-award contracts entered into by GSA or government-wide task and delivery order contracts.</p>
	Proposed Rule, DFARS 236.602-1, 236.602-2, 236.602-4, 236.604 Case 2003-D035	<p>Propose rules to update text pertaining to the selection of firms for architect-engineer contracts.</p>
	Interim Rule, DFARS Case 2003-D105	<p>Applies to contracts for architect-engineer services for military construction or family housing projects by increasing, from \$85,000 to \$300,000, the threshold below which acquisitions for these services can be for small business set asides.</p>

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Subject Matter	Title /Citation	Description
Statute		
Key Policies on the Service Area of Information Technology	Clinger Cohen Act (Formerly Federal Acquisition Reform Act)/Information Technology Management Reform Act August 8, 1996 Public Law 104-208/ 40 U.S.C 1401 (3)	Establishes the role of Chief Information Officers in the government, and forms the interagency Chief Information Officers' Council. The Act is intended to improve government performance through the effective application of information technology and requires agency heads to establish a process to select, manage and control their IT investments.

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Subject Matter	Title /Citation	Description
	FAR Part 39, Acquisition of Information Technology, [Division A, Section 101(h), Title VI, Section 622 of the Omnibus Appropriations and Authorization Act for Fiscal Year 1999] Public Law 105-277	<ul style="list-style-type: none"> <li>• Agencies may not use appropriated funds to acquire information technology that does not comply with 39.106, unless the agency's Chief Information Officer determines that noncompliance with 39.106 is necessary to the function and operation of the agency or the acquisition is required by a contract in effect before October 21, 1998. The Chief Information Officer must send a copy of all waivers to OMB for forwarding to Congress.</li> <li>• In acquiring information technology (IT), agencies shall identify their requirements pursuant to OMB Circular A-130, including consideration of security of resources, protection of privacy, national security and emergency preparedness, accommodations for individuals with disabilities, and energy efficiency. When developing an acquisition strategy, contracting officers should consider the rapidly changing nature of IT through market research (see Part 10) and the application of technology refreshment techniques.</li> <li>• Agencies must follow OMB Circular A-127, Financial Management Systems, when acquiring financial management systems. Agencies may acquire only core financial management software certified by the Joint Financial Management Improvement Program.</li> </ul>
	FAR 39.104	Policies and procedures are provided in the Part. Addresses when it is not appropriate to describe minimum experience or educational requirements for proposed contractor personnel in solicitations acquiring IT services.

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Subject Matter	Title /Citation	Description
		Recommends use of modular contracting when acquiring IT and related services to reduce program risk.
Statute	Regulations	Definitions
DFARS Part 239.101: Acquisition Of Information Technology		Requires that Subpart 208.74 Enterprise Software Agreements are used when acquiring commercial software or software maintenance that is acquired as part of a system or system upgrade or under a service contract.
Section 827 of the National Defense Authorization Act for Fiscal Year 2003 Public Law 107-314	Authorizes DoD to enter into multiyear contracts for environmental remediation services for military installations.	
Environmental Services for Military Installations-Multiyear Procurement Authority	Final Rule, DFARS 217.171, effective May 13, 2004 Case 2003-D004	This rule amends DFARS 217.171(a) to implement Section 827 of the National Defense Authorization Act of Fiscal Year 2003 by adding to the list of services permitted to be acquired under this authority the following as subparagraph (a)(1)(v): "Environmental remediation services for (A) an active military installation; (B) a military installation being closed or realigned under a base closure law as defined in 10 U.S.C. 2667(h)(2); or (C) a site formerly used by DOD."
		In addition, this rule amends DFARS 217.103, Definitions, to add the following definition for "military installation": "a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense (10 U.S.C. 2801(c)(2))."
Facilities Management	DFARS 219.502-2	States that the contracting officer should unless

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<b>Subject Matter</b>	<b>Title /Citation</b>	<b>Description</b>
		<p>the criteria for set-aside cannot be met, set-aside small business concerns acquisitions for:</p> <ul style="list-style-type: none"> <li>• Construction, including maintenance and repairs, under \$2M</li> <li>• Dredging under \$1M</li> <li>• Architect-engineer services for military construction or family housing projects of under \$300K (also see DFARS subpart 219.10)</li> </ul>
Maintenance of Facilities and Base Operations	Subpart 37.3: Dismantling, Demolition, or Removal of Improvements	<p>Explains procedures for contracting for dismantling or demolition of buildings, ground improvements and other real property structures and for the removal of such structures or portions of them.</p> <p>If the contract is solely for dismantling, demolition, or removal of improvements, the Service Contract Act applies.</p>
Medical or Health Care Services	FAR Subpart 22.1003-5; Some examples of contracts covered-Service Contract Act of 1965, as amended. Public Law 89-286/41 U.S.C 351-358 (see reference above on SCA)	<p>Some support services at installations, including grounds maintenance and landscaping</p> <p>Prescribes policies and procedures for obtaining health care services of physicians, dentists and other health care providers by nonpersonal services contracts, as defined in 37.101.</p>

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<b>Subject Matter</b>	<b>Title /Citation</b>	<b>Description</b>
Advisory and Assistance Services	FAR 2.101 : Definitions	<p>Defines advisory and assistance services as support to improve:</p> <ul style="list-style-type: none"> <li>• Organizational policy development</li> <li>• Decision making</li> <li>• Management and administration</li> <li>• Program/project management and administration</li> <li>• R&amp;D activities</li> </ul> <p>It entails providing:</p> <ul style="list-style-type: none"> <li>• Professional advice/assistance</li> <li>• Information</li> <li>• Opinions</li> <li>• Alternatives</li> <li>• Analyses</li> <li>• Evaluations</li> <li>• Recommendations</li> <li>• Training</li> <li>• Day-to-day aid of support personnel</li> </ul> <p>The following classifications apply to advisory and assistance services:</p> <ul style="list-style-type: none"> <li>• Management and professional support services</li> <li>• Studies, analyses and evaluations</li> <li>• Engineering and technical services</li> </ul> <p>FAR Subpart 37.2: Advisory and Assistance Services</p> <p>Prescribes policies and procedures for acquiring advisory and assistance services by contract. The subpart applies to contracts, whether made with individuals or organizations, that involve either personal or nonpersonal services.</p>

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<b>Subject Matter</b>	<b>Title /Citation</b>	<b>Description</b>
	FAR 37.203: Advisory and Assistance Services	<p>States that agencies may contract for contract and advisory assistance services to:</p> <ul style="list-style-type: none"> <li>• Obtain outside points of view</li> <li>• Obtain advice regarding developments in industry, university, or foundation research</li> <li>• Obtain the opinions, special knowledge, or skills of noted experts</li> <li>• Enhance the understanding of, and develop alternative solutions to, complex issues</li> <li>• Support and improve the operation of organizations</li> <li>• Ensure more efficient/effective operation of managerial or hardware systems</li> </ul> <p>This subpart also identifies circumstances when contracted advisory and assistance services should not be used.</p>
	FAR 16.504: Indefinite Quantity Contracts, Section c.2.	<p>States that a contracting officer must make multiple awards if an indefinite-quantity contract for contract and advisory services exceeds 3 years and \$10M. This subpart also identifies exemptions to this rule.</p>
	DFARS Subpart 237.2: Advisory And Assistance Services	<p>Provides guidance on definitions of services when provided by nongovernmental sources (10 U.S.C. 2212), acquisition of audit services, management controls and requesting activity responsibilities.</p>
	OFPP Act, Sec 23; Contracting Functions Performed by Federal Personnel 41 U.S.C. 419	<p>States that a person cannot be paid for advisory and assistance services (evaluations and analyses of any aspect of a proposal submitted) unless personnel with adequate training and capabilities to perform such evaluations and analyses are not readily available within the agency or another Federal agency, as determined with the standards and procedures established in the FAR.</p>

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<b>Subject Matter</b>	<b>Title /Citation</b>	<b>Description</b>
Research & Development	FAR Part 35, Research and Development Contracting	<p>This part prescribes policies and procedures of special application to research and development (R&amp;D) contracting.</p> <p>In general, the primary purpose of R&amp;D programs is to advance scientific and technical knowledge and apply that knowledge to achieve agency and national goals. Most R&amp;D contracts are directed toward objectives for which the work or methods cannot be precisely described in advance, so contracting process are to be used to encourage involvement of the best sources from the scientific and industrial community. Contracts, grants or cooperative agreements should be used.</p>
	DFARS Part 35, Research and Development Contracting	<p>The part contains procedures to be followed to obtain the highest competence in the specific field of science or technology involved when buying R&amp;D. It also provides policies on contracts for research with educational institutions and nonprofit organizations, the use of broad agency announcements and acquisition from Federally Funded Research and Development Centers.</p> <p>Provides additional guidance in these matters as well as rules on the indemnification of contractors to support specific R&amp;D efforts.</p>
Services Subject to Trade Agreements	FAR Subpart 25.4: Trade Agreements	<p>Provides policies and procedures applicable to acquisitions that are subject to various bilateral and multilateral free trade agreements. These agreements generally provide that foreign items are treated in a non-discriminatory manner.</p> <p>Exceptions are detailed in the subpart for acquisitions of services. R&amp;D services are specifically excluded from coverage of the trade agreements.</p>

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Subject Matter	Title /Citation	Description
Temporary or Intermittent Services of University Students at R&D Laboratories.	Title 10 U.S.C. Part IV, Chapter 139, Sec. 2360, R&D Laboratories: contracts for services of university students	Guidance on the use of temporary or intermittent services of university students on providing technical support at defense research and developmental laboratories.
GWAC/Multiple Award Contracts	FAR 2.101: Definitions	<p>Defines government-wide acquisition (GWAC) as a task-order or delivery order for information technology established by one agency for government-wide use that is operated:</p> <ul style="list-style-type: none"><li>• By an executive agent designated by OMB pursuant to section 5112(e) of the Clinger-Cohen Act, 40 U.S.C. 1412 (e), or</li><li>• Under a delegation of procurement authority issued by GSA prior to August 7, 1996, under authority granted by GSA by the Brooks Act, 40 U.S.C. 759 (repealed by P.L. 104-106)</li></ul> <p>FAR Subpart 16.5: Indefinite-Delivery Contracts</p> <p>Prescribes the policies and procedures for making awards of indefinite-delivery contracts and establishes a preference for making multiple awards of indefinite-delivery contracts.</p>

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Subject Matter	Title /Citation	Description
DFARS Subpart 216.5: Indefinite-Delivery Contracts	Identifies limitations on the period for task order or delivery order contracts awarded by DoD pursuant to 10 U.S.C. 2304a.	Provides policies and procedures for the use of indefinite-delivery type contracts with orders to be placed either— (A) Directly by the users; or (B) By central purchasing offices with deliveries direct to users.
Acquisition of Services through Federal Supply Schedules (FSS) Program	FAR 8.4: Federal Supply Schedules	Implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107) for multiple award contract orders. FSS is also known as the GSA Schedules Program or the Multiple Award Schedule Program. The FSS program is directed and managed by GSA and provides Federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying.
	FAR 19.804-6	Multiple award and FSS contracts—states that separate offers and acceptances cannot be made for individual orders under multiple award or FSS contracts. FAR 19.805-1 requirements do not apply for orders exceeding the competitive threshold if the original contract was competed. This section also addresses 8(a) concerns.

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Subject Matter	Title /Citation	Description
FAR Part 38, Federal Supply Schedule (FSS) Contracting		<p>The FSS program, pursuant to 41 U.S.C. 259(b)(3)(A), provides federal agencies with a simplified process of acquiring commercial supplies and services in varying quantities while obtaining volume discounts. Indefinite-delivery contracts are awarded using competitive procedures. Firms provide supplies and services at stated prices for given periods of time, for delivery within a stated geographic area such as the 48 contiguous states, the District of Columbia, Alaska, Hawaii, and overseas. The schedule contracting office issues FSSs that contain information for placing orders.</p>
DFARS Part 208, Subpart 208.4-208.7		<p>Provides additional policies on Federal Supply Schedules. For example, each order for services exceeding \$100,000 is placed on a competitive basis (i.e., when the contracting officer provides fair notice of the intent to make a purchase, including a description of the work to be performed by the contractor and the basis upon which the contracting officer will make the selection) unless the contracting officer waives this requirement on the basis of FAR 16.505 (b) (2)(i)-(iii), or by statute that authorizes/requires a purchase from a specified source. This subpart also prescribes policy and procedures for the acquisition of items for which contracting responsibility is assigned to one or more of the departments/agencies or GSA.</p>

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<b>Subject Matter</b>	<b>Title /Citation</b>	<b>Description</b>
Acquisition of Services from Federal Prison Industries (UNICOR)	FAR 8.603; Purchase Priorities	<p>Federal Prison Industries, Inc. (FPI) and nonprofit agencies participating in the Javits-Wagner-O'Day (JWOD) Program (see Subpart 8.7) may produce identical supplies or services. When this occurs, FAR 8.603 establishes the following priorities:</p> <ul style="list-style-type: none"> <li>(a) <i>Supplies.</i> <ul style="list-style-type: none"> <li>(1) Federal Prison Industries, Inc. (41 U.S.C. 48).</li> <li>(2) JWOD participating nonprofit agencies.</li> <li>(3) Commercial sources.</li> </ul> </li> <li>(b) <i>Services.</i> <ul style="list-style-type: none"> <li>(1) JWOD participating nonprofit agencies.</li> <li>(2) Federal Prison Industries, Inc., or commercial sources.</li> </ul> </li> </ul>
Acquisition of Services from Committee for Purchase from People Who Are Blind or Severely Disabled	Statute  Javits-Wagner-O'Day Act 41 U.S.C. 46-48c	<p>The Javits-Wagner-O'Day (JWOD) Act, 41 U.S.C. 46-48c, established a procurement program to increase employment opportunities for individuals who are blind or have severe disabilities.</p> <p>The Act makes it mandatory for all federal agencies to purchase certain supplies and services from designated nonprofit agencies.</p>

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Subject Matter	Title /Citation	Description
Acquisition of Services from Committee for Purchase from People Who Are Blind or Severely Disabled	FAR 8.7: Acquisition from Non-Profit Agencies Employee People Who Are Blind or Severely Disabled	<p>Implements the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c), referred to as "the JWOD Act," and the rules of the Committee for Purchase from People Who Are Blind or Severely Disabled (41 CFR Chapter 51).</p> <p>The Committee maintains a "Procurement List" of supplies (including military resale commodities) and services that the Committee has determined are suitable for purchase by the Government under the Javits-Wagner-O'Day Act.</p> <p>The JWOD Act requires the Government to purchase supplies or services on the Procurement List, at prices established by the Committee, from JWOD participating nonprofit agencies if they are available within the period required.</p>
Contract Types	FAR Part 16, Types of Contracts	<p>Ordering offices may acquire supplies or services on the Procurement List from commercial sources only if the acquisition is specifically authorized in a purchase exception granted by the designated central nonprofit agency.</p>
Management of Service Contracts	FAR Subpart 37.5: Management Oversight of Service Contracts	<p>Identifies types of contracts, any of which may be used for services. Nevertheless, services are often provided for under Indefinite-Delivery contracts, Time and Materials, Labor Hour contracts and Agreements identified in this part of the FAR.</p> <p>This subpart establishes responsibilities for implementing Office of Federal Procurement Policy (OFPP) Policy Letter 93-1, Management Oversight of Service Contracting, which set out that program officials are responsible for accurately describing the need to assure responsive</p>

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	<p>performance by contractors, working with contracting officials. Services are to be obtained and used in ways that ensure that the Government retains inherently governmental decision-making authority. Also, services are to be obtained in the most cost effective manner, without barriers to full and open competition, and free of any potential conflicts of interest, by trained and experienced officials who will manage and oversee the contract.</p>	<p><b>FAR Subpart 2.101: Definitions</b></p> <p><b>FAR Subpart 7.5: Inherently Governmental Functions</b></p>	<p>Provides the definition for an inherently governmental function.</p> <p>The purpose of this subpart is to prescribe policies to ensure that inherently governmental functions are not performed by contractors. It implements the policies of Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, Inherently Governmental Functions. Superseded new OMB Circular A-76.</p> <p>Defines performance-based contracting as structuring all aspects of an acquisition around the purpose of the work to be performed with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work.</p> <p><b>FAR Subpart 2.101: Definitions</b></p> <p><b>Performance-Based Contracting Methods</b></p> <p><b>FAR Subpart 37.6: Performance-Based Contracting</b></p>
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	Proposed Rule—Federal Acquisition Regulation, Performance-Based Service Acquisition FAR Case 2003-018	<p>The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation by:</p> <ul style="list-style-type: none"> <li>• Changing the terms “performance-based contracting” and “performance-based service contracting” to “performance-based acquisition” or “performance based services acquisition”</li> <li>• Adding applicable definitions</li> <li>• Modifying the regulation to broaden the scope of PBA and give agencies more flexibility in applying PBSA methods to contracts and orders of varying complexities</li> <li>• Reducing the burden of force-fitting contracts and orders into BPA where it is not appropriate.</li> </ul>
Statute	Regulations	Section 210 expires September 30, 2005
Share-in-Savings Contracts	E-Government Act, 2002, Section 210 Public Law 107-347	<p>Amends the Armed Services Procurement Act and the Federal Property and Administrative Services Act by authorizing government-wide use of IT share-in-savings contracts.</p>

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<b>Subject Matter</b>	<b>Guidance and Other Documents Pertaining to Service Contracting</b>	<b>Description</b>
OFPP Guidance on Best Practices for Performance-Based Service Contracting	October 1988 <a href="http://www.acqnet.gov">www.acqnet.gov</a>	This non-mandatory regulatory guidance contains best practices that agencies have found useful in drafting statements of work, solicitations, and quality assurance plans, and in awarding and administering performance-based service contracting.
OFPP Guidance on Best Practices for Multiple Award Task and Delivery Order Contracting	July 1997 (Interim Edition) <a href="http://www.acqnet.gov">www.acqnet.gov</a>	This non-mandatory regulatory guidance contains best practices in the key phases of the multiple award contracting process authorized by the Federal Acquisition Streamlining Act of 1994 including, among other areas, the "Fair opportunity to be considered" requirement and streamlined ordering procedures. Many of the best practices pertain to the IT area, but may be applicable to other industries, as appropriate.

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OFPP Report on Performance-Based Service Acquisition--Contracting for the Future	July 2003 <a href="http://www.acqnet.gov">www.acqnet.gov</a>	<p>The Report provides six recommendations that support changes to the FAR, reporting requirements, and guidance.</p> <p>A. Modifying the FAR.</p> <p><i>Recommendation No. 1:</i> Modify the FAR Part 2 to include definitions for: 1) performance work statement, 2) quality assurance surveillance plan, 3) statement of objectives, and 4) statement of work to support changes to Part 37. Modify FAR Parts 11 and 37 to broaden the scope of PBSA and give agencies more flexibility in applying PBSA to contracts and orders of varying complexity.</p> <p>B. Modifying Reporting Requirements and Procedures</p> <p><i>Recommendation No. 2:</i> Modify the list of eligible service codes for PBSA, as articulated in the Federal Procurement Data System (FPDS) or FPDS B Next Generation (FPDS-NG) manual, to more accurately reflect services to which PBSA can be applied. Agencies are not prohibited from using PBSA on other contracts, but for the purposes of data collection, agencies will not be evaluated on their application of PBSA to efforts that are not considered eligible service contracts.</p>

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		<p><i>Recommendation No. 3:</i> Revise FPDS instructions to ensure agencies code contracts and orders as PBSA if more than 50 percent of the requirement is performance based, as opposed to the current 80 percent requirement.</p> <p><i>Recommendation No. 4:</i> Allow agencies that do not input data to FPDS to submit supplemental reports in order to accurately reflect their progress toward meeting the goals.</p> <p><i>Recommendation No. 5:</i> Consider allowing agencies to establish interim goals, but expect agencies to apply PBSA to 50 percent of their eligible service contracts (see recommendation 2 above) by 2005, in line with DOD policy.</p> <p>C. Improving Guidance.</p>
		<p><i>Recommendation No. 6:</i> OPPP should rescind its 1998 Best Practices Guide and consider developing web-based guidance to assist agencies in implementing PBSA. This guidance should be kept current and should include practical information, such as samples and templates that agencies would find useful. The website should include "The 7-Steps to Performance-Based Services Acquisition Guide" and may include elements of existing guidance. The working group will explore the development a web-based PBSA site for guidance, samples, and templates.</p>

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The Seven Steps to Performance Based Services Acquisition	Developed by Interagency Group chaired by the Commerce Department under the Procurement Executive Council's initiative.	This guide breaks down performance-based service acquisition into seven simple steps: Establish an integrated solutions team, describe the problem that needs solving, examine private-sector and public-sector solutions, develop a performance work statement, or statement of objectives, decide how to measure and manage performance, select the right contractor, and manage performance.
OMB Report on Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business	October 2002, <a href="http://www.acqnet.gov">www.acqnet.gov</a>	In March 2002, the President announced his small business agenda which, among other things, requested the OMB to develop a strategy for unbundling contracts. The October report outlined nine specific steps to eliminate unnecessary contract bundling and mitigate the effects of necessary contract bundling. Five of the steps required changes to the SBA regulations and the FAR as follows: (1) clarify the definition of contract to require contract bundling reviews for task and delivery orders under multiple award contracts, (2) require agency reviews of proposed acquisitions above specified thresholds for unnecessary and unjustified contract bundling, (3) require identification of alternative acquisition strategies for proposed bundling of contracts above specified levels and written justification when alternative involving less bundling is not used; (4) mitigate the effects of contract bundling by strengthening compliance with subcontracting plans, and (5) mitigate the effects of contract bundling by facilitating the development of small business teams and joint ventures